Circuit Court for Carroll County
Case No. 06C15069052

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2097

September Term, 2016

JOHN M. SARIGIANIS

v.

CHRISTINE A. SARIGIANIS

Arthur,
Friedman,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: March 13, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellee, Christine V. Albert, formerly Sarigianis (Christine or Wife), was granted an absolute divorce on November 4, 2016, by the Circuit Court for Carroll County, based on cruelty of treatment. The appellant is John M. Sarigianis (John or Husband). Wife's relief included indefinite alimony and a monetary award. Husband principally contends that the circuit court erred in the amount of those two awards. As explained below, we find no error and shall affirm.

The parties were married in May 1983. Four children were born of the marriage, Beth, Becky, Bonnie, and Christopher, all of whom were emancipated at the time of the divorce decree.

At all relevant times, John has worked in the business founded by his father, the John Sarigianis Company (the Company). It is a manufacturers' sales representative for HVAC equipment. The Company also employs Husband's brother, James. By the time of the instant divorce, the Company was owned fifty percent by John and Christine and fifty percent by James and his spouse.

Christine is a college graduate, holding a degree in social work. After the birth of Beth in February 1986, Wife worked part-time for the Company until March 1992. For the next twenty-four years she was not employed outside of the home. Wife began studying nursing in the spring of 2014, was licensed as an R.N. in the spring of 2016, and presumably started work as an R.N. in August 2016 at Saint Agnes Hospital.

The marriage lasted thirty-three years. Each of the parties was fifty-eight years of age at the time of divorce.

John was a good provider—and an abuser. The trial court found that his W-2 income from the Company for 2008 through 2013 averaged $499,945 per year. For each of 2014 and 2015 the court imputed to him income of $376,000. In addition, Husband received $20,500 per year in rental income from a related entity that held title to the Company-occupied realty.

After five days of trial in July 2016, the circuit court wrote a thirty-one page opinion which fully describes the cruelty of treatment. It began in 1986. John monitored Wife's gasoline usage. He berated her for visiting her grandmother who lived two miles away. "His anger towards [Wife] stemmed in part from complaints he was receiving from his mother … for [Wife's] not spending enough time with [Husband's mother]." The parties' relationship improved substantially over the next decade when they moved first to Reisterstown and then to Westminster.

"By 1999, [Husband] had resumed his controlling and bullying behavior toward [Wife] and within a few years began being emotionally abusive to the parties' daughters. Coincidentally, it was in 1999 that [Husband's] mother had moved to the Westminster area." John "would explode in a rage toward [Christine] and other family members." He admitted that he could not control the outbursts. Wife "became more and more fearful for herself and her children."

Sometime in 2004, John knocked Becky to the floor and kicked her in the ribs in an incident over which pump to use to inflate a soccer ball. After this incident, John sought medical attention. He remained on medication for about six months, refused to stay on it, and the rages resumed. "Over the ensuing years" this pattern repeated itself.

"Becky and Bonnie were being regularly slapped across their faces by their father for … acting in any way [John] perceived as being disrespectful, in any way challenging his authority[,] or in any manner which he felt was contrary to his religious beliefs." "[A]fter 2007 [Husband's] outbursts only escalated." Wife felt "she was always 'walking on eggshells' around [Husband]."

By 2008 John said "he hated" his brother and would leave the Company. He did not, because it angered his mother. In the three years preceding Wife's father's death in 2012, he was in failing health. She would take him to medical appointments and spend time with him. John "would angrily belittle and demean [Christine] for doing so."

> "Everything came to a head between the parties on Memorial Day 2012 when [John], after berating [Christine] over another benign matter, *i.e.*, whether to serve ground beef or a roast for a family get-together, angrily called out to [Christine] 'you damn woman' and took his semi-automatic Glock pistol (.40 caliber) from the parties' dresser. [John] began waiving [sic] the pistol and clip in separate hands, although he did not point the gun at [Christine]. Nonetheless, [Christine] felt threatened and fearful. This incident resulted in Becky contacting the police, [John] being arrested and being transported to Carroll Hospital Center on an Emergency Petition, having a restraining order placed against him, and his never thereafter returning to the marital home. [John] subsequently told his mother, Beth and other members of his family that he was depressed and had gotten the gun to threaten his own life – although [Christine] felt threatened as well."

John told one of the witnesses, his friend Mr. John Davis, that the twenty-six-week anger management course which had been court-ordered was silly. John also told that witness "numerous times that [Christine] was not a 'submissive wife' as required by scripture."

Christine requested that John stay on his medications but he did not take those requests seriously. In January 2013, she sued for divorce.

Testimony was taken for three days in November 2013 but trial was recessed until February 2014. John had agreed to get medical attention and to take what medicine might be prescribed. The claim for divorce was dismissed.

Although the parties, in March and April 2014, engaged in condonation, they never resumed living together. John refused to seek medical attention. He "continued to bully [Wife] and insist that she be more submissive to him." He continued "to show explosive anger." On one occasion, "he slammed her car door on her foot." He unilaterally reduced payments of $5,000 per month in alimony and $3,500 per month in child support for Christopher to a total of $5,000 per month. He "often indicated to [Wife] that she needed to be 'punished' and 'taught a lesson' for her prior actions." In the fall of 2015, he gave her a book "which suggests, from a Christian fundamentalist standpoint, how wives can and should be more submissive to their husbands." "[H]e quoted his sister as saying that a Christian husband should not have to deal with such a non-submissive wife."

This divorce action was filed by Husband on June 10, 2015. On September 8, 2015, Wife counterclaimed for divorce. The final decree is dated November 4, 2016. As particularly relevant to this appeal, the court ordered indefinite alimony of $7,000 per month with an additional $2,000 per month to be credited against alimony arrearages totaling $62,000, and payment within sixty days by Husband of the $7,072 balance on the family home mortgage. The court also entered a monetary award of $74,822.

Questions Presented

Husband presents the following questions:

"I. Did the trial court err and/or was it clearly erroneous when it included expenses that Christine did not have in its alimony calculations?

"II. Did the trial court err and/or abuse its discretion when it entered a monetary award in favor of Christine, without any explanation as to why the amount of the award was necessary, to adjust the equities and rights of the parties, and it double counted an asset?"

I

Standard of Review

"An alimony award will not be disturbed upon appellate review unless the trial judge's discretion was arbitrarily used or the judgment below was clearly wrong." *Tracey v. Tracey*, 328 Md. 380, 385 (1992). We "accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings." *Id.* Accordingly, "absent evidence of an abuse of discretion, the trial court's judgment ordinarily will not be disturbed on appeal." *Solomon v. Solomon*, 383 Md. 176, 196 (2004).

Discussion

In determining that alimony should be indefinite and in the amount of $7,000 per month, the court expressly considered in its written opinion all of the applicable factors set forth in Maryland Code (1984, 2012 Repl. Vol.), § 11-106(b) of the Family Law Article (FL).[1]

[1]The FL § 11-106(b) factors "necessary for a fair and equitable award" are:

"(1) the ability of the party seeking alimony to be wholly or partly self-supporting;

(continued…)

Among the principal facts found by the court were that Christine, as a newly minted R.N., would earn $26.70 per hour, with benefits, beginning August 1, 2016. Her current monthly expenses were $7,954. During the pendency of the divorce cases, she had accumulated debts exceeding $300,000, owed to her mother ($120,000), to Susquehanna Bank ($75,000), and to a credit card issuer ($50,700), plus counsel fees and litigation

(…continued)

> "(2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
>
> "(3) the standard of living that the parties established during their marriage;
>
> "(4) the duration of the marriage;
>
> "(5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
>
> "(6) the circumstances that contributed to the estrangement of the parties;
>
> "(7) the age of each party;
>
> "(8) the physical and mental condition of each party;
>
> "(9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
>
> "(10) any agreement between the parties;
>
> "(11) the financial needs and financial resources of each party, including:
>
> "(i) all income and assets, including property that does not produce income;
>
> "(ii) any award made under §§ 8-205 and 8-208 of this article;
>
> "(iii) the nature and amount of the financial obligations of each party; and
>
> "(iv) the right of each party to receive retirement benefits; and
>
> "(12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur."

expenses. During the marriage, the parties had "enjoyed a lifestyle befitting a family earning in excess of $500,000 per year."

For the six years preceding 2014, John had W-2 income averaging $55 short of $500,000. During that period, John and his brother basically had split the amount available to them for distribution as salary. In 2014 and 2015 John's distribution dropped by $300,000, but James's stayed at $526,000. The court attributed one-half of the difference ($150,000) to John. That finding is not challenged here. John had debts of $298,179.17, $283,661 of which was the mortgage on the home in which he was living. John's monthly expenses totaled $6,659.28.

Christine was the primary caregiver to each child. In addition she homeschooled the children, Beth (grades 1 through 8), Becky (2 through 5), Bonnie (7 through 12), and Christopher (1 through 3 and 6 through 12).

Factor (6), the circumstances that contributed to the estrangement, here, Husband's "cruelty toward [Wife] and other family members," had been fully reviewed by the court in its opinion.

The court concluded, with respect to alimony:

> "In light of [Wife's] current stated income and expenses, however, even after considering the taxable nature of alimony and the parties' prior lifestyle, both of these numbers [the A.A.M.L. and Kaufmann guidelines] yield a result beyond [Wife's] stated needs. The [c]ourt therefore sets indefinite alimony at $7,000 per month, commencing August 1, 2016."

John submits that this action must be remanded because Christine's "*ACTUAL*" monthly expenses were $5,494 and not $7,954 as stated by Christine on her financial statement signed on July 25, 2016, the first day of trial. That statement included as

expenses $1,460 per month for the mortgage on the family home and $1,000 per month for tuition and books. John says that these were expenses "which [Christine] no longer had."

Husband assumes that the court was operating within a framework under which alimony is limited by the recipient's expenses. Claiming that Wife's inclusion of the mortgage and tuition expenses in her financial statement was like a mathematical computational error by the court, Husband submits that remand is required. The argument is contrary to the structure of the court's opinion and to the law, because the court's decision did not rest solely on Wife's financial statement.

First, the two factual "errors" claimed by John are factually correct statements as of the close of the record. The family home was subject to a mortgage with a balance of $7,072 or five more monthly payments (7,072 ÷ 1,460 = 4.8). John had up to sixty days to pay the balance in full or obtain a release of lien.[2]

As of the close of the record, Christine was to start as an R.N. at Saint Agnes Hospital on August 1, 2016, and she was enrolled in a program for a B.S.N. degree. The tuition and books were $1,000 per month per Wife's financial statement. The trial court stated in its opinion that this expense "will likely be reimbursed by [Wife's] employer."

We need not opine on whether or how a trial court in cases like the instant one should specifically address future contingencies. This is because it is clear that the court was aware of the variables and took them into consideration within a much larger framework of evaluation. "Although the court … is not required to employ a formal

[2]One interpretation is that Christine would have to advance at least two months payments to stay current.

checklist, mention specifically each factor [in FL § 11-106(b)], or announce each and every reason for its ultimate decision," *Crabill v. Crabill*, 119 Md. App. 249, 261 (1998), the court in the instant matter chose to write a very full opinion. The court thereby made plain that it was considering equitable as well as economic factors.

The alimony statute, including FL § 11-106(b), was enacted by Chapter 575 of the Acts of 1980 as a result of the 1980 Report of the Governor's Commission on Domestic Relations Laws (the Report). The Court of Appeals explained the interrelationship of the § 11-106(a) factors in *Blaine v. Blaine*, 336 Md. 49 (1994), where it said:

> "Section 11-106(b) sets forth specific factors that must be considered by the court in determining whether an award of alimony is appropriate. A number of these factors are relevant to the parties' relative financial situations, consistent with the longstanding principle that alimony is an economic concept and awards are based upon the need of the recipient spouse balanced against the ability of the payor spouse to provide support. *See* 1980 Report at 5; *Flanagan v. Flanagan*, 270 Md. 335, 339, 311 A.2d 407 (1973); *Willoughby v. Willoughby*, 256 Md. 590, 593, 261 A.2d 452 (1970); *Brown v. Brown*, 204 Md. 197, 206, 103 A.2d 856 (1954). But, as we observed in *Tracey* [*v. Tracey*, 328 Md. 380 (1992)], a number of the enumerated factors are clearly equitable in nature, with little or no relation to the economic situations of the parties. 328 Md. at 391-92 n.3, 614 A.2d 590. These equitable factors include the standard of living during the marriage, the duration of the marriage, the spouses' non-monetary contributions to the well-being of the marriage, and the circumstances leading to the breakup of the marriage, *see supra* n.3, and must be considered along with the economic issues in making a 'fair and equitable' award. § 11-106(b). These concepts, for the most part, were already in existence in Maryland common law, *see, e.g., Blumenthal v. Blumenthal*, 258 Md. 534, 540, 266 A.2d 337 (1970); *Dougherty v. Dougherty*, 187 Md. 21, 33, 48 A.2d 451 (1946), and their inclusion in the statutory language reflected a belief that it would be 'contrary to common experience' and equitable principles to expect a court not to consider them in regard to making an award of alimony. 1980 Report at 6. This idea reflects the Commission's stated belief that a court must be vested with the discretion necessary to tailor its decision upon a sense of fairness. 1980 Report at 2."

Id. at 65-67 (footnotes omitted).

Having reviewed the award of alimony in the instant matter under the economic and equitable factors of FL § 11-106(b), we find no error or abuse of discretion.

II

Husband's remaining contention is that the court erred in the amount of its monetary award. Our analysis is a reprise of that applied to Husband's alimony issue.

Here, there is no issue over what constitutes marital property, or its value, or indeed whether some monetary award is appropriate. The error, John submits, is that the court double counted the balance on loans by John to the Company when deciding that an award of $74,822, payable in four annual installments of $18,705, was "fair and equitable." FL § 8-205(b)(11).

Our review of the amount of a monetary award is highly deferential. *See Ward v. Ward*, 52 Md. App. 336, 339 (1982) ("It is important to realize that the monetary award is purely discretionary." (Footnote omitted).).

The court determined the amount of the award by applying the eleven factors enumerated in FL § 8-205(b) which are substantially the same prescribed for determining the amount of alimony. *See* n.1, *supra*. Although not required specifically to go through that checklist, *see Hart v. Hart*, 169 Md. App. 151, 166 (2006), the court did so, in many instances simply by a reference back to its conclusion on the point in its decision on alimony.

The court valued the marital property titled in Husband's name at $1,392,864. This included $171,597 in loans owed by the Company to John. Marital property in Wife's

name was valued at $308,805. The court ordered an even division of Husband's 401K, the transfer of the family home to Wife exclusively (with Husband to pay the mortgage balance), and the transfer to the respective parties of the personal property in the homes which they would respectively be occupying. At this point, the court calculated that Christine's interest was $6,322 shy of fifty percent of the total marital property.[3]

The court concluded:

> "Following the above ordered transfers, a monetary award of $6,322 would allow for an equal division of marital property. However, Section 8-205 of the Family Law Article requires 'equitable' division, not 'equal' division. *Alston v. Alston*, 331 Md. 496 (1993). Having considered all the factors set forth in Section 8-205(b) of the Family Law Article, including, but not limited to, debt which [Wife] assumed during the past four (4) years, but exclusive of alimony arrears, [Wife] will be granted a monetary award of $74,822. This sum will be repaid without interest in four (4) equal annual installments of $18,705. One of [the] reasons the company has been able to pay the Sarigianis brothers the salaries it has is due to the unique, line of credit extended by each brother to the company. This keeps overhead down. On the other hand, this loan is marital property and the [Wife's] interest in it must be accounted for. The fair way to treat this is to provide for the payment of the monetary award over time."

The court's reference to *Alston* signals that this is a case in which equality is not equity. The court so concluded based on all of the factors in FL § 8-205(b). Factor (11) is "any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award …." An additional equitable factor in this case was that a portion of John's after-tax earnings from the Company, that was marital property, was loaned back to the Company interest free to the benefit of the Company and

[3]John's calculation is that, at this point, Christine's interest exceeded fifty percent of the total marital property by $1,499. The variation is immaterial inasmuch as the issue is whether there was an abuse of discretion in the amount of the final award.

of the stock titled in John's name. Christine lost the benefit of currently participating in the use of those funds. That is not double counting the principal.

Husband bemoans the absence of any explanation of the calculation of $18,705 per year for four years as the monetary award. But the court explained that it considered all of the § 8-205(b) factors for determining the amount of a monetary award and concluded that the amount awarded was appropriate to make fair and equitable the disparity in title to marital property. Nothing more is required by the statute.

For all the foregoing reasons, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED.

COSTS TO BE PAID BY THE APPELLANT.